

Section 21159.28 of the Public Resources Code is added to read:

21159.28. (a) As an alternative to the procedures otherwise set forth in Chapters 2.6 and 4 of this division, a city or county may elect to review urban housing projects meeting the requirements of this subdivision (b) according to the procedures set forth in this section. If a city or county reviews and approves an urban housing project under this section, no negative declaration or environmental impact report shall be prepared for the urban housing project, and the city or county shall not be required to comply with Chapters 2.6 and 4 for any discretionary permit, approval or action required as part of the urban housing project, including without limitation any variance, conditional use permit, subdivision map approval or amendment to the city or county general plan land use element or zoning ordinance classification applicable to the site of the urban housing project. Except as provided in this section, an urban housing project is subject to all applicable laws.

(b) An urban housing project qualifies for review under this section if all of the following requirements are met:

(1) A regional growth plan has been adopted, after compliance with this division, for the area where the project is located by either a council of governments as defined in Government Code Section 65582, or a joint powers agency formed by at least three public agencies with a combined population in excess of 100,000 residents, or a county with a population in excess of 100,000 residents.

(2) The city or county has adopted a discretionary design review ordinance applicable to the urban housing project, which: (A) regulates the design of the project, (B) provides a process for review aesthetics, noise, light and glare, and parking issues, and (C) provides an opportunity for public review and comment upon the project, including a public hearing and public notice as required by Government Code Section 65090.

(3) The city or county has adopted a fee program, or a discretionary permit procedure, which provides authority for the city or county to collect necessary fees for the impact of the project on traffic, parking and other public infrastructure needs.

(4) The city or county has adopted a regulatory program which (A) requires an analysis of the traffic impacts of new urban housing projects; and (B) provides authority to impose project-specific mitigation measures, including fees or physical improvements, which the city or county determines are appropriate for the project.

(5) The site of the urban housing project is not designated as open space or park land in the city or county general plan, and is not within the geographic scope of a conservation planning area as defined within an agreement authorized pursuant to section 2810 of the Fish and Game Code.

(6) The site of the urban housing project is located within the area designated by the regional growth plan as appropriate for urban development.

[We need to draft a condition that responds to the CARB land use handbook, the pending SCAQMD land use handbook, and the potential for other such land use directions from air districts. We have drafted both a specific and general condition, and are seeking input on the best approach.]

Alternative 1:

(7) The urban housing project is (i) located outside the eight areas listed to be avoided by residences identified in Table 1-1 of the CARB Handbook, or (ii) for projects located within these areas, the city or county finds based on substantial evidence that “site-specific project design improvements,” such as “enhanced building ventilation or filtering systems” as described in the CARB Handbook, have reduced potential air pollution exposures for residents of the urban housing project to an acceptable level. For purposes of this section, “CARB Handbook” means the “Air Quality and Land Use Handbook: A Community Health Perspective” adopted by the Air Resources Board in April 2005 or as it may be amended by the Board in the future.

Alternative 2:

(7) The city or county finds based on substantial evidence that project does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(c) If the urban housing project meets the requirements in subdivision (b), then a city or county electing to review and approve an urban housing project under this section must, after a noticed public hearing, adopt as conditions of approval the mitigation measures identified in the adopted regional growth plan and which the city or county determines are appropriate under the design review ordinance described in subsection (b)(2) above, the fee program or permit procedure described in subsection (b)(3) and traffic impact regulatory program described in subsection (b)(4) above for the urban housing project, except for any mitigation measures identified in the adopted growth plan which the city or county finds, based on substantial evidence, would not be appropriate for this specific project. The adoption of such conditions of approval by the city or county does not require any further compliance with this division. [we need to get a better understanding of what these mitigation measures might be]

(d) If a city or county approves an urban housing project pursuant to this section, it shall file the notice required under section 21152 with the county clerk, the agency which adopted the regional growth plan, and the Office of Planning and Research, which notice shall state that the urban housing project was qualified for review and approved and in accordance with this Section 21159.28. Any action or proceeding challenging the city or county’s approval of the urban housing project shall be subject to the same procedural requirements as any action filed under Section 21167, and shall be commenced within 30 days of the posting of the notice of determination by the county clerk. Judicial review of the approval of an urban housing project under this section shall be pursuant to section 21168, and the court shall uphold the agency’s determinations under this section, including approval of the project, if it finds substantial evidence to support the agency’s decision.

(e) For purposes of this section, “urban housing project” means a project with a density of at least 8 dwelling units to the acre, excluding from this density calculation all of the land in the project dedicated to streets, roads, parks and other public facilities as part of the project. “Urban housing project” also includes mixed use, educational and commercial development included within the project, provided that these nonresidential uses do not exceed 25 percent of the total floor area of the project. For purposes of this section “regional growth plan” means a plan, adopted after compliance with this division, which identifies specific areas that are appropriate for housing projects in existing urban areas, and provides standards for the design and location of housing and which identifies specific mitigation measures for individual projects to address regional environmental issues [insert other planning criteria]. [We need further consideration of the definition of “regional growth plan”].